IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 11TH OCTOBER 2007 / 19TH ASWINA 1929

CRL.A.No. 161 of 2001()

CC.70/1997 of JUDL.MAGISTRATE OF FIRST CLASS, VADAKARA

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APPELLANT: COMPLAINANT

MOOSA HAJEE
S/O.MAMMU, IYYANATHTHAZHAKUNIYIL HOUSE
P.O.KEEZHAL, VADAKARA BY POWER OF ATTORNEY HOLDER, BROTHER
E.T.K.KUNHABDULLA, (P.O.) KEEZHAL,
(VIA) VADAKARA.

BY ADV. SRI.C.VALSALAN
SRI.C.D.SHAJU

RESPONDENTS: ACCUSED & STATE

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1. REMLA, W/O.IBRAHIMKUTTY
THEKKUM MURI, KIZHAKKUM MURIYIL
HOUSE, H.NO.X/552, S.R.P.MARKET
THAZHAVA PANCHAYAT, IDAPPARAYIL,
QUILON DISTRICT.

2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.C.K.SURESH
DR.K.P.SATHEESAN
SRI.K.K.GOPINATHAN NAIR
SRI.M.R.JAYAPRASAD
SRI.K.K.RAJEEV

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD
ON 11/10/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

K.R.UDAYABHANU, J

Crl.A.No.161 of 2001

Dated this the 11th day of October, 2007

JUDGMENT

The appellant is the complainant in C.C.No.70/97 with respect to the offence under Section 138 of the Negotiable Instruments Act in which the accused stands acquitted.

2. The complainant is the power of attorney holder of the payee. The impugned cheque is with respect to a sum of Rs.50,000/-. The allegation is that the accused owed a sum of Rs.50,000/- to the payee and towards discharge of the liability issued Ext. P1 cheque which when presented for encashment got dishonoured for want of funds in the account of the accused. The lawyer notice sent was refused.

3. The evidence adduced in the matter consisted of the testimony of PW1, the power of attorney holder who is the brother of the complainant and Exts. P1 to P6. It stands proved from Ext. P6 the ledger extract and the evidence of PW1 that there was no sufficient funds in the account of the accused. Court below has dismissed the complainant acquitting the

accused. The power of attorney holder could not establish that there existed a legally enforceable debt. It was brought out in the cross examination of PW1 that the transaction was in between the husband of the accused and that the brother of the complainant, both of whom working in the Middle East. Counsel for the appellant has sought for an opportunity to examine the complainant.

4. In the circumstances, the matter is remitted back to the court below for fresh disposal after affording opportunity to both the parties to adduce further evidence if they so desire. The matter will stands posted before the court below on 6.11.2007.

The criminal appeal is disposed of accordingly.

K.R.UDAYABHANU,
JUDGE

csl